

SEP 02 2009

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

## UNITED STATES COURT OF APPEALS

## FOR THE NINTH CIRCUIT

ANDRES ERNESTO HERNANDEZ,

Plaintiff - Appellant,

v.

MIGUEL VILICANA, Lieutenant,

Defendant - Appellee.

No. 08-55778

D.C. No. 3:99-cv-02121-JAH-  
CABMEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
John A. Houston, District Judge, Presiding

Submitted July 17, 2009<sup>\*\*</sup>

Before: HUG, SKOPIL and BEEZER, Circuit Judges.

Andres Ernesto Hernandez appeals pro se from the district court's final judgment in favor of Defendant Villicana after the jury returned a verdict denying Hernandez's claim brought under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). We affirm.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The facts of the case are known to the parties and we do not repeat them here.

Hernandez waived his right to challenge on appeal the jury's verdict because he did not file a motion under Federal Rule of Civil Procedure 50(b). *See Nitco Holding Corp. v. Boujikian*, 491 F.3d 1086, 1089 (9th Cir. 2007); *Desrosiers v. Flight Int'l of Fla. Inc.*, 156 F.3d 952, 956–57 (9th Cir. 1998).

**AFFIRMED.**